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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 000206

SIPDIS

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TAGS: [PGOV](#) [PHUM](#) [PREL](#) [OSCE](#) [TU](#)
SUBJECT: TURKISH HUMAN RIGHTS GROUP LAUNCHES GENOCIDE CASE
AGAINST ISRAEL

Classified By: DCM Doug Silliman for reasons 1.4(b,d)

11. (C) Summary and Comment: The Turkish NGO Human Rights and Solidarity for Oppressed People (Mazlum-Der) has filed a legal complaint accusing the Israeli government and 19 Israeli officials of committing genocide and crimes against humanity for the recent operation in the Gaza Strip. The complaint has initiated a legal process by which an Ankara public prosecutor must conduct a preliminary investigation to determine whether the case has sufficient merit to send to the Ministry of Justice for its review and approval. The Mazlum-Der President told us he would be meeting with the Justice Minister to urge him to allow the case to proceed. Several legal experts told us this is the first case in Turkey to assert the principle of universal jurisdiction. Given the public outcry over Gaza, the prosecutor seems likely to move the case up to the Justice Minister who will decide whether to move the case forward or kill it. Legal experts expect the MOJ to dismiss the case under international pressure, limiting Mazlum-Der to appeal in administrative court -- a lengthy legal proposition they believe Mazlum-Der is not prepared to follow through to the end. The Israeli Embassy has already protested this case with the MFA in hopes of ensuring an MOJ decision not to proceed. We will advise the GOT at an appropriately high level that accepting this case is not in its interest. End summary.

HR Group Files Genocide Complaint

12. (C) Mazlum-Der President Omer Faruk Gergerlioglu confirmed to us February 9 that Mazlum-Der submitted a criminal complaint to the Ankara prosecutor against the Israeli government and 19 Israeli officials -- including the PM, FM, and MOD -- for committing genocide and crimes against humanity in Israel's recent operation into Gaza. Gergerlioglu said the complaint invokes Article 13's principle of universal jurisdiction, a first in Turkey. He told us that Mazlum-Der compiled a great deal of evidence to support the claim, including documentation compiled by a Mazlum-Der delegation that went to Gaza following the Israeli operation. The delegation brought back photos, oral evidence, and skin samples from victims to be tested in Turkish labs. Gergerlioglu said Turkish labs found evidence of phosphate in the samples, bolstering the theory that Israel used phosphate bombs. Mazlum-Der attached the delegation's evidence to the detailed legal brief it sent to the prosecutor, alleging Israel and Israeli officials carried

out "direct attacks on civilians with the aim of annihilating them."

¶3. (C) Gergerlioglu said the prosecutor accepted the complaint and, as required by law, initiated a preliminary investigation. If the prosecutor deems the case to have sufficient merit, he must submit it to the Justice Ministry for approval. Gergerlioglu is meeting with Minister of Justice Sahin February 9 to present evidence and urge the Minister to allow the case to proceed. He plans to note that other European governments, such as Spain and Belgium, have pursued similar cases.

¶4. (C) Gergerlioglu said Mazlum-Der is prepared to pursue the legal process to the end. He said the case is a first step in Mazlum-Der's overall strategy. The organization is considering whether to apply to the International Criminal Court to urge it to initiate a similar case, and plans to pressure the GOT to file a case in the International Court of Justice against Israel. He believes the strong Turkish public opinion against the Israeli operation will help Mazlum-Der pressure the GOT, noting that this is an extremely rare issue that unites Turks across the political spectrum. The high degree of domestic and international media attention on Gaza also would help Mazlum-Der bring pressure to bear, he said.

¶5. (C) Gergerlioglu emphasized that Mazlum-Der takes issue with the actions of the Israeli state but is not opposed to the Jewish people. There is no anti-Semitism in Turkey, he claimed, and Turks are able to differentiate between Jews and

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the state of Israel. He pointed out that Mazlum-Der has been out front in condemning anti-Semitism in Turkey, including its recent cooperation with prominent liberals to lobby the GOT to speak out against both Israel's Gaza operation and anti-Semitism in Turkey. He also noted that Mazlum-Der had frequently issued statements condemning Palestinian suicide bombers attacking Israel, to the consternation of Turkish Islamists. Gergerlioglu said Mazlum-Der exists to fight for all oppressed people, and noted that the organization had condemned the visits of Sudanese leaders to Turkey and supports ICC trials to bring to justice those responsible for massacres in Darfur.

Legal Procedures Under TPC Article 13

¶6. (C) Orhan Kemal Cengiz, a prominent human rights attorney, told us February 8 that TPC Article 13 uses the principle of universal jurisdiction to allow Turkish courts to try those charged with committing genocide and torture, no matter where the crime occurred. He explained that a complaint filed by a private citizen or organization triggers a process by which the public prosecutor must by law undertake a preliminary investigation. (NOTE: Turkey witnessed this legal practice during the spate of private citizen complaints filed in 2006-2007 pursuant to the infamous Article 301. END NOTE.) According to Cengiz, the purpose of the preliminary investigation is to take the statement of the accused and then determine whether there is legal justification to continue with the second stage -- prosecution.

¶7. (C) Cengiz said that if the prosecutor determines the complaint followed correct procedures and that there is a sufficient amount of evidence to allow the case to proceed, he must submit the case to the MOJ for a similar review. If the MOJ finds no procedural flaws and also finds sufficient substantive merit to allow the case to proceed, the Ministry must next forward the case to the Ministry of Foreign Affairs so that it can initiate procedures to take the statement of the accused -- here, the GOI and 19 Israeli officials.

¶8. (C) The case may be dismissed for procedural or

substantive reasons at any stage of the process, according to Cengiz. He believes it very unlikely that the prosecutor would dismiss such a politically charged case, instead choosing to forward it to the MOJ. Dismissal by the MOJ or MFA would qualify as a dismissal on procedural grounds, he explained.

Timing: A Long Legal Path

¶9. (C) Cengiz predicted that the prosecutor's preliminary investigation will last 3-5 months because "Article 13 is not one of the few provisions of the TPC that requires prosecutors and courts to act on an expedited basis." If the prosecutor and MOJ allow the case to proceed, Cengiz said the novelty of the case in Turkey makes it difficult to assess how long it would require to obtain the statements of the accused. If the case is dismissed, an appeal would take many months, perhaps over a year, according to Cengiz.

¶10. (C) Cengiz believes the MOJ will recognize the negative publicity the case will bring to the GOT and therefore dismiss the case, using "any dozen procedural or legal methods." Mazlum-Der would therefore be required to appeal to the Administrative Court, he noted. Diyarbakir-based human rights attorney Tahir Elci told us that pursuing the case would require Mazlum-Der to be committed to a long and drawn out legal process, which he sees as unlikely. Human rights attorney Oya Aydin agreed, telling us that if the GOT opposes the case, it is unlikely Mazlum-Der will have the wherewithal to pursue it through a lengthy appeals process. All of these legal contacts assumed that the USG and its allies would bring great pressure to bear on the GOT to turn off the case.

Israelis Already Engaged Against the Case

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¶11. (C) Israeli DCM Menahem Kanafi told DCM and RLA February 5 that Israeli had already raised its objections to the possible case with the MFA. He commented that the list of Israelis named in the Mazlum-Der complaint seemed "random," including Israeli officials either no longer in government or not involved in the Gaza operation. Even though the GOI expects the MOJ to prevent the case from going forward, the Israeli Embassy is seeking to identify a qualified Turkish lawyer to consult if the case moves forward.

Visit Ankara's Classified Web Site at
<http://www.intelink.sgov.gov/wiki/Portal:Turkey>

Jeffrey